

2023 ONSC 5551  
Ontario Superior Court of Justice

S-L.T. v. M.L.

2023 CarswellOnt 15194, 2023 ONSC 5551

**S-L.T. (Applicant) and M.L. (Respondent)**

L. Bale J.

Heard: August 11, 2023  
Judgment: October 4, 2023  
Docket: 733-17

Counsel: Ben Fortino, for Applicant  
Raymond D. Sowley, for Respondent

Subject: Contracts; Family

**Headnote**

Family law

**Table of Authorities**

**Cases considered by L. Bale J.:**

*Bouchard v. Sgovio* (2021), 2021 ONCA 709, 2021 CarswellOnt 14175, 63 R.F.L. (8th) 257 (Ont. C.A.)

*Lopatowski v. Lopatowski* (2018), 2018 ONSC 824, 2018 CarswellOnt 1890, 3 R.F.L. (8th) 411, 140 O.R. (3d) 731 (Ont. S.C.J.)

**Rules considered:**

*Family Law Rules*, O. Reg. 114/99  
Generally

R. 1(8)

**Regulations considered:**

*Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.)  
*Federal Child Support Guidelines*, SOR/97-175

s. 7

**L. Bale J.:**

**OVERVIEW**

1 The materials before the court on this long motion are as follows:

- a. Notice of Motion of the Applicant, Ms. S-L.T., dated May 17, 2023;
- b. Affidavit of the Applicant, sworn May 17, 2023 (53 pages);
- c. Responding Affidavit of the Respondent, sworn July 26, 2023 (87 pages);
- d. Reply Affidavit of the Applicant, sworn August 2, 2023 (20 pages); and
- e. Legal *facta* of each party.

2 The Applicant mother requests an Order which makes findings of non-compliance by the Respondent father, and ‘temporary’ modifications to the wording of the operative Final Order of the Honourable Mme. Justice M. Donohue dated December 1, 2021, in an effort to compel his future compliance.

3 The Applicant mother asserts a wide variety and significant number of breaches.

4 The Respondent father is opposed to the motion. He denies any *unjustified* breaches of the Order, and instead asserts that it is the Applicant mother who has repeatedly breached the terms and spirit of the Order. He too lists a substantial number of alleged breaches, although he seeks no relief arising therefrom.

5 Over 150 pages of Affidavit materials were filed.

6 It would be an unjustified waste of judicial time and resources to attempt to synthesize and adjudicate every alleged breach of the court Order that has been raised by the parties on this motion (upwards of 30). Instead, in keeping with this court’s positive obligation to promote the primary objective of the *Family Law Rules*, I will limit my analysis and decision to the general areas of dispute which appear to have instigated the return of this case to court.

## BACKGROUND

7 The parties were married on May 5, 2007 and separated on September 3, 2015.

8 Together they are the parents of P.L. and R.L., aged 16 and 13 respectively.

9 A court proceeding was commenced in 2017. All issues were resolved on consent pursuant to the Final Order of the Honourable Mme. Justice M. Donohue dated December 1, 2021, in accordance with Final Minutes of Settlement filed.

10 The Final Order is 61 paragraphs in length. The following paragraphs are salient to the issues before the court on this long motion:

Paragraph 3: The children shall reside primarily with the Applicant and shall share time with the Respondent as follows, commencing July 1, 2021...

...

(c) Additional time with the children for hockey practices and games on weekdays.

(d) In the event that any extracurricular activity, including hockey tournaments, team events, games, practices, etc. falls on the Applicant’s weekend, she shall be permitted to take the children herself. The Respondent will not attend these games unless otherwise agreed to by the parties in writing.

...

Paragraph 19: Both parties shall be at liberty to attend at any and all school functions, including open houses, school council meetings, plays, sporting events, concerts, assemblies, fund raisers, etc. The parents should remain cordial during these occasions, and respectful to one another's feelings which includes the exclusion of extended family members in the absence of written consent.

...

Paragraph 24: Both parties shall not attend any extra-curricular activities unless it falls on their parenting time. For extra-curricular activities that will be a one-time or single occurrence, such as a concert, or recital, both parties are at liberty to attend and the parties shall remain cordial during these occasions, and respectful to one another's feelings, which includes the exclusion of other family members in the absence of written consent.

...

Paragraph 43: In the event that the parties disagree on the interpretation and/or implementation of any parenting provision herein, the parties shall jointly retain the service of a parenting coordinator to assist in resolving the issue. The parties shall share equally in the parenting coordinator's fees, unless otherwise directed by the parenting coordinator, who shall have discretion to allocate fees and disbursement unequally if the parenting coordinator considers that fair. The parties shall utilize the services of Lourdes Geraldo for parenting coordinator, subject to her availability and consent. In the event that Lourdes Geraldo is unable or unwilling to act as the parenting coordinator, the parties shall jointly retain another mutually agreed parenting coordinator.

## LAW & ANALYSIS

### *a. Issue #1 — Parenting Coordination*

11 The terms of Paragraph 43 of the Final Order are unambiguous. Specifically, paragraph 43 requires that “In the event that the parties disagree on the *interpretation and/or implementation of any parenting provision herein*, the parties *shall* jointly retain the service of a parenting coordinator to assist in resolving the issue...” (emphasis added).

12 It is clear from the Affidavits filed by both parties that they are struggling with the *implementation* of the parenting provisions in many areas (e.g. the sharing of information, consultation on child-related issues, attendance at special events and occasions, payment of section 7 expenses and reimbursement of benefits, travel consents, telephone contact with children, transfer of children's belongings between homes, involvement of children in adult discussions, etc.). All of the narrative provided by both parties regarding the alleged breaches suggests that both children have been negatively drawn into the parties' conflict. Perhaps most significantly, as it appears to be an issue that is quite distressing to both parties and to the children, it is obvious that the parties hold competing *interpretations* of paragraphs 19 and 24 regarding attendances at the children's activities.

13 It is common ground that the Applicant mother has repeatedly requested that the parties attend Parenting Coordination. In essence, the Respondent father advises that he did attempt to comply with the requirement to participate in parenting coordination but:

- a. On October 21, 2022 he was notified by Parenting Coordinator, Ms. Geraldo, of a conflict of interest. On October 25, 2022 he responded to Ms. Geraldo that as a result of the conflict he was not comfortable with retaining her services.
- b. The father reached out to other Parenting Coordinators in the area and scheduled a zoom intake appointment with Mr. Tabrizi of Riverdale Mediation, for December 1, 2022.
- c. He was sent a Parenting Coordination Agreement for review with counsel on December 23, 2022.
- d. He met with counsel on January 19, 2023 and “received advice that the parenting coordination process was not

necessary due to the nature of the dispute and the wording of the agreement”.

e. He spoke with legal counsel again on February 6, 2023, who purportedly reiterated that “the process was not necessary”.

f. He emailed Mr. Tabrizi on February 14, 2023 advising that he would not be moving forward with Parenting Coordination based on the legal advice he received.

14 It does not appear that the father has made any further efforts to engage in Parenting Coordination since that time. Instead, the father advises in his Affidavit that “ultimately I felt that parenting coordination was not likely to be successful in gaining her consent. I intended to continue my research and gain resources to determine if the most appropriate action was to file a Motion to Change on my own behalf to have this section of the Final Order reviewed”.

15 The following excerpts from Steps to Justice: Your Guide to Law in Ontario provides a useful overview of the Parenting Coordination process:

Parenting coordination is an alternative dispute resolution, also called family dispute resolution process. Parents can meet with a parenting coordinator for help with following the parts of their court order, family arbitration award, or separation agreement that are about parenting.

...

A parenting coordinator is a person who helps parents resolve day-to-day conflicts about their parenting arrangements or parenting orders.

A parenting coordinator doesn’t decide major things like decision-making responsibility or parenting time. These used to be called custody and access. But a parenting coordinator can decide minor issues like:

- small changes to a parenting access plan such as vacations and holidays
- scheduling activities and arranging for pick up and drop off to activities like ballet, hockey, or tutoring
- children’s travel and passport arrangements
- how your children’s clothing and school items are moved between your and your partner’s homes

A parenting coordinator helps you speak with each other to try and agree on your parenting issues. If you can’t agree, they can decide for you. Their decision is based on information they get from the parents, professionals such as doctors, teachers, counsellors, etc., and, if needed, your child.

The process is similar to mediation-arbitration. But the parenting coordinator cannot make major decisions. Their job is to help you follow the parts of your court order, family arbitration award, or separation agreement that are about parenting.

Parenting coordinators are trained to:

- understand the needs of children
- help each parent discuss their parenting issues
- help parents to manage and keep children out of conflicts

...

Some of the reasons to use parenting coordination are:

- You get professional help that you may need even after you have a court order, family arbitration award, or separation agreement on parenting issues. Children’s needs and issues often change as they get older. A parenting coordinator can help parents who find it hard to communicate with each other and want to set up a process for how they will resolve future issues.
- It can be faster than going to court once you have agreed on all of the process details and signed a parenting coordination agreement.
- It can be cheaper than going to court to resolve minor parenting issues.

Community Legal Education Ontario, “What is Parenting Coordination?” (1 March, 2021), online: <https://stepstojustice.ca/questions/family-law/what-parenting-coordination/?gclid=>.

16 It is important to reiterate that the Final Order of Mme. Justice M. Donohue was made on consent, pursuant to Final Minutes of Settlement (i.e. a written contract) entered into between the parties. With respect to the parenting coordination clause:

- a. In the absence of consent, the court cannot delegate decision-making power; but
- b. The court can make such orders on consent; and
- c. Where such orders are made on consent, they are enforceable: see [Lopatowski v. Lopatowski, 2018 ONSC 824 \(CanLII\)](#) at paras. 35-41.

17 In December 2021 the parties agreed that it would be in the best interests of their children to resolve future disputes over implementation and interpretation of their parenting arrangements with the assistance of a Parenting Coordinator. The nature of the complaints raised on this motion demonstrate the good sense behind this decision. By their joint request to have this provision incorporated into a formal Order of the court it became more than just a good sense suggestion: it became an Order.

18 It is quite concerning that legal counsel advised the Respondent (twice) that he was not required to obey an Order of the court. By his continued failure to engage in Parenting Coordination, the Respondent father, by his own admission, has made no effort to comply with this court-ordered requirement since February 2023. The father’s belief that the process would not result in success in addressing his own concerns and objectives is (1) likely misplaced, and (2) insufficient grounds upon which to disobey an Order of the court.

19 [Rule 1\(8\) of the Family Law Rules](#) provides the court with broad remedial powers in circumstances where a person fails to obey an Order in a case.

20 In [Bouchard v. Sgovio, 2021 ONCA 709 \(CanLII\)](#) the Ontario Court of Appeal clarified the broad and purposeful applications of [Rule 1\(8\)](#):

- a. As long as the judge is satisfied that there has been a failure to obey an order ‘in a case or a related case’, subrule 1(8) is triggered and the relief ordered can be provided;
- b. [Rule 1\(8\)](#) provides an itemized list of forms of relief that are available, but that list is inclusive, not exclusive;
- c. The reach of the remedial orders that can be made is not governed by the itemized list, but by the general and broad language of the chapeau that precedes it: “the court may deal with the failure by making any order that it considers necessary for a just determination of the matter”;

d. The court is not limited to purely procedural remedies.

21 These broad powers are particularly important when the orders address the well-being of children: see paragraphs 48-51. However, as noted, there is a fine line between making an Order that temporarily changes parenting rights and varying or replacing terms of an existing Final Order: see paragraph 54. In my view, some of the requested relief sought by the Applicant mother crosses that line, and is overreaching.

22 In this case, a just determination requires terms designed to compel the Respondent's compliance with paragraph 43 of the Final Order. As such, there shall be an Order to go as follows:

1. The parties shall forthwith retain a Parenting Coordinator in accordance with the following terms:

- a. Respondent father shall within 14 days propose three accredited Parenting Coordinators for the Applicant's consideration, including particulars of the Parenting Coordinator's credentials, fees, and availability.
- b. The Applicant mother shall select one of proposed Parenting Coordinators within 14 days of receipt of the Respondent's proposed choices.
- c. The parties shall thereafter fully retain the selected Parenting Coordinator, including the completion of a fully executed Parenting Coordination Agreement and payment of the requisite retainer in equal parts, within 30 days of selection.

2. Unless mutually terminated at an earlier date, the parties shall remain engaged with the Parenting Coordinator for a minimum term of six months.

3. Within 30 days the Respondent shall pay to the Applicant the sum of \$508.50 as costs thrown away arising from previous but incomplete efforts to retain a Parenting Coordinator.

4. In the event that the Respondent fails to comply with the terms outlined above:

- a. Leave is granted for the Applicant mother to commence a Motion to Change proceeding, on the basis that the Respondent's failure to comply with his court-ordered obligation to participate in Parenting Coordination is a material change in circumstances; and
- b. The Respondent father shall not commence a Motion to Change proceeding without leave of the court.

23 I have included a minimum participation period of six months in Parenting Coordination in an effort to compel genuine good faith efforts on the part of both parties to reach child-focused resolution of their parenting disputes. Both parties have an obligation to reduce the level of conflict between them and to protect P.L. and R.L. from that conflict. In my view, this minor, time-limited, variation of the Final Order of Mme. Justice M. Donohue is necessary in the best interests of the children, who have been unfairly drawn into the adult conflict and are at risk of psychological and emotional harm as a result of that exposure. Both of the parties are forewarned that they are unlikely to be successful in a Motion to Change proceeding, on the basis of their inability to coparent, difficulty in implementing existing parenting terms, or unsuccessful efforts to manage conflict between them, in the absence of demonstrated good faith efforts to participate in this valuable alternative dispute resolution process.

***b. Issue #2 - Attendance at Children's Activities***

24 The issue of the father's attendance, and the attendance of members of the paternal side of the family, at the children's sporting events was a major area of contention on this motion. The parties have competing interpretations of the court-ordered terms. Notwithstanding the court's view that the parties' concerns and competing interpretations ought to have

been addressed with the assistance of a Parenting Coordinator, with the onset of high school sports and awareness that the parenting conflict related to this issue is causing distress to P.L. and R.L., this court will attempt to provide interpretive guidance.

25 A plain-language interpretation of the relevant terms of the court Order, language which was jointly selected by the parties, suggests that they intended to treat different categories of children's activities differently: paragraph 3(d) addressing extra-curricular activities which fall on weekends, paragraph 19 addressing school-related activities, and paragraph 24 addressing all other extra-curricular activities.

26 The Applicant mother cites attendance of the Respondent and his extended family members at sporting events on September 23, 2022, October 21, 2022, February 22, 2023 (extended family only), March 1, 2023, March 23, 2023 (father only), and May 9, 2023 as breaches of paragraphs 3(d), 19, and 24 of the Final Order.

27 A precise determination of who attended what events and when was difficult to ascertain from the parties materials. In general however, it appears that:

a. In the fall of 2022, the father and members of his extended family attended some of P.L.'s football games, which fell on the mother's weekday parenting time. The court is advised that:

- a. Football is a school sport;
- b. The father was not always aware of his family's intention to attend;
- c. The father and his family maintained a respectful distance from the mother if she was present at the event; and
- d. At times, P.L. invited the extended paternal family to attend, and on other occasions the paternal family learned of the events through other sources (e.g. publicly posted calendars, friends, etc.).

b. In the winter of 2023, the father attended R.L.'s basketball games on the mother's weekday parenting time. The court is advised that:

- a. Basketball is a school sport; and
- b. There are competing positions as to whether or not extended family members attended these events which cannot be determined on Affidavit evidence alone.

c. In the spring of 2023, the father attended R.L.'s volleyball games on the mother's weekday parenting time. The court is advised that:

- a. Volleyball is a school sport;
- b. There are competing positions as to whether or not extended family members attended these events which cannot be determined on Affidavit evidence alone; and
- c. The mother stopped attending R.L.'s games because of her allegation that the father and his extended family continued to attend, against her wishes.

28 The father advises that both children have consistently requested that he and his extended family attend their school sporting events. There is no evidence of any inappropriate contact or communications between the parties at these events.

29 The children are no longer involved in any organized extra-curricular activities outside of school. As a result, I find that the operative term of the Final Order applicable to this issue is:

Paragraph 19: Both parties shall be at liberty to attend at any and all school functions, including open houses, school council meetings, plays, sporting events, concerts, assemblies, fund raisers, etc. The parents should remain cordial during these occasions, and respectful to one another's feelings which includes the exclusion of extended family members in the absence of written consent.

30 It is this court's interpretation of paragraph 19 of the Final Order that the Respondent is entitled to attend all of the children's school sports activities, regardless of whose parenting time the event falls on. I cannot find that the father has breached the terms of the Order of Mme. Justice M. Donohue by his attendance at any school sporting events on any of the dates referenced by the Applicant.

31 The issue of the attendance of extended family members at school activities, as referenced within the second sentence of paragraph 19 is more problematic: "The parents should remain cordial during these occasions, and respectful to one another's feelings which includes the exclusion of extended family members in the absence of written consent".

32 In my view, the second portion of paragraph 19 is not enforceable, as it is presently worded, for multiple reasons:

- a. The selection of the word "should" by the parties suggests that the parties believed the provision to be the reasonable or proper thing to do as parents. In a sense, this is more reflective of an agreed-upon moral obligation than legal obligation. By contrast, the word "shall", which was specifically not used, is a command.
- b. To be respectful of another person's feelings is simply too broad and too subjective a concept to be enforceable as a legal term, except *perhaps* in extremely obvious and flagrant circumstances.
- c. Absent notice to the third parties, the court did not have the power to exclude non-parties from future activities or events (and did not expressly do so).
- d. The Respondent father cannot be held legally accountable for the actions of adult non-parties with a free will of their own.

33 As a result, I cannot find the Respondent father to be in breach of this court-ordered term under [Rule 1\(8\) of the Family Law Rules](#) arising from his family's attendance at the children's school sporting events. However, notwithstanding this finding, I do believe that the issue of the father's extended family's attendance at extra-curricular activities ought to have been explored in Parenting Coordination. It would have been open to the Parenting Coordinator, if he or she saw fit, to provide the interpretative guidance that this court has provided (at lesser expense than this motion), and to speak with the parties, the children and potentially the extended family members to determine whether a reasonable arrangement could have been negotiated that both addressed levels of discomfort and allowed the children to enjoy the benefits of loving and supportive spectators in a child-friendly atmosphere. I encourage the parties to address this issue further in Parenting Coordination.

## ORDER

34 On the basis of the above, there shall be an Order to go as follows:

1. The parties shall forthwith retain a Parenting Coordinator in accordance with the following terms:
  - a. The Respondent father shall within 14 days propose three accredited Parenting Coordinators for the Applicant's consideration, including particulars of the Parenting Coordinator's credentials, fees, and availability.
  - b. The Applicant mother shall select one of proposed Parenting Coordinators within 14 days of receipt of the Respondent's proposed choices.
  - c. The parties shall thereafter fully retain the selected Parenting Coordinator, including the completion of a fully executed Parenting Coordination Agreement and payment of the requisite retainer in equal parts, within 30 days of



selection.

2. Unless mutually terminated at an earlier date, the parties shall remain engaged with the Parenting Coordinator for a minimum term of six months.
3. Within 30 days the Respondent shall pay to the Applicant the sum of \$508.50 as costs thrown away arising from previous but incomplete efforts to retain a Parenting Coordinator.
4. In the event that the Respondent fails to comply with the terms outlined above:
  - a. Leave is granted for the Applicant mother to commence a Motion to Change proceeding, on the basis that the Respondent's failure to comply with his court-ordered obligation to participate in Parenting Coordination is a material change in circumstances; and
  - b. The Respondent father shall not commence a Motion to Change proceeding without leave of the court.
5. If costs are an issue:
  - a. The party seeking costs shall serve and file Cost Submissions, not exceeding two pages in length, exclusive of a Bill of Costs, by October 20, 2023;
  - b. The responding party shall serve and file Responding Cost Submissions, not exceeding two pages in length, exclusive of Bill of Costs, by November 10, 2023;
  - c. Reply Submissions, if any, not exceeding one page in length, shall be served and filed by November 24, 2023; and
  - d. If Cost Submissions are not served and filed by October 20, 2023, there shall be no costs payable arising from this motion.